

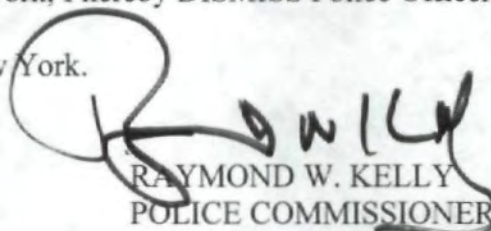


POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :
- against - : FINAL
Police Officer James Kim : ORDER
Tax Registry No. 919242 : OF
Facilities Management Division : DISMISSAL
-----X

Police Officer James Kim, Tax Registry No. 919242, Shield No. 19241, Social Security No. ending in 4526, having been served with written notice, has been tried on written Charges and Specifications numbered 85161/09 as set forth on P.D. 468-121, dated April 7, 2009, and after a review of the entire record, has been found Guilty as Charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer James Kim from the Police Service of the City of New York.


RAYMOND W. KELLY
POLICE COMMISSIONER

EFFECTIVE: @ 0001HRS ON March 29, 2011



POLICE DEPARTMENT

November 22, 2010

-----X
In the Matter of the Charges and Specifications : Case Nos. 85161/09
- against - :
Police Officer James Kim :
Tax Registry No. 919242 :
Facilities Management Division :
-----X

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Martin G. Karopkin
Deputy Commissioner - Trials

A P P E A R A N C E:

For the Department: David Green, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent: John Tynan, Esq.
111 John Street
New York, New York 10038

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

COURTESY • PROFESSIONALISM • RESPECT

The above-named member of the Department appeared before me on September 29, 2010 and October 14, 2010, charged with the following

1 Said Police Officer James Kim, while assigned to the 5th Precinct, on or about April 27, 2005, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he completed a materially false, or fraudulent statement in the business records or commercial instrument of an enterprise, which created, transferred, or otherwise affected a legal right or interest, to wit said Police Officer prepared or submitted a false mortgage application to National City Mortgage in order to purchase real property in New Jersey, by

- a) representing that he was employed by Food Expo, Inc as the companys Controller, when he was not,
- b) attaching fraudulent W-2s for 2003 and 2004 representing income as an employee of Food Expo, Inc , and
- c) attaching two (2) fraudulent 2004 paystubs representing income as an employee of Food Expo, Inc *(As amended)*

P G 203-10, Page 1, Paragraph 5 -- PERFORMANCE DUTY -- GENERAL
GENERAL REGULATIONS

Title 18, U S Code 1001(2) & (3) - Statements or entries generally

N Y S Penal Law Section 170 10(1) - Forgery in the second degree

N Y S Penal Law Section 175 05(1) - Falsify business records in the second degree

2 Said Police Officer James Kim, while assigned to the Facilities Management Division, on or about November 6, 2008, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that, during an official interview of said Police Officer pursuant to the provisions of Patrol Guide Section 206-13, conducted by ranking members of the Internal Affairs Bureau, Group #12, and the Financial Investigations Unit, said Police Officer impeded or otherwise interfered with an official Department investigation, to wit

- a) said Police Officer falsely denied that he had represented that he was an employee of Food Expo, Inc , or that he had attached two (2) W-2 forms and two (2) paystubs indicating that he was an employee of Food Expo, Inc , related to a mortgage application submitted by him in on or about April 27, 2005 to purchase real property in New Jersey, and
- b) said Police officer falsely denied knowing an individual called Byung Woo Choi, the Chief Operating Officer of Food Expo, Inc *(As amended)*

P G 203-10, Page 1, Paragraph 5 -- PUBLIC CONTACT -- PROHIBITED
CONDUCT -- GENERAL REGULATIONS

The Department was represented by David Green, Esq , Department Advocate's Office, and the Respondent was represented by John Tynan, Esq

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty of Specification No. 1 and Not Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Detective Christopher Doty as its sole witness.

Detective Christopher Doty

Doty has been assigned to the Financial Investigations Unit of the Internal Affairs Bureau for three years. His duties and responsibilities are to analyze financial documents and investigate crimes that have financial angles to them.

Doty has a bachelor's degree in accounting from the State University of New York, Binghamton. He is a New York State certified public accountant and a certified fraud examiner. Doty explained that a certified fraud examiner receives a certification from the Association of Certified Fraud Examiners in Houston, Texas. He stated that there is a course and then a test to gain the certification.

In connection to his certification as a fraud examiner, Doty explained that to maintain his certification he is required to participate in 24 hours annually of continued professional education which involves 10 hours of fraud and 14 hours of other accounting or fraud related areas

Doty testified that to maintain his certified public accountant license he takes continuing education courses which involve 60 hours of study annually His license is renewed every three years

Doty testified that he was assigned to investigate the Respondent in July or August 2007 At the beginning of the case, Doty stated, "I believe the allegation was off duty employment, and from there it grew into other allegations "

The allegations in question involved an application for a mortgage for a property in New Jersey Doty explained

Upon reviewing documents obtained via subpoena from National City Bank, we noted that there were two earnings statements and two W-2s included with the application They were from a company Food Expo, Incorporated

During the course of my investigation, I didn't see any indication that the officer had been employed by the company However, the earnings statements and W-2 stated he had earned income from that business

Doty explained that Department Exhibit (DX) 1 was the information obtained from National City Bank, through the Manhattan District Attorney's office via subpoena [DX 1 is a document that contains a four-page Uniform Residential Loan Application, a two-page Attachment to Loan Application, a seven-page ACRA net report prepared for First American Lending Corp , two Food Expo Inc Earning Statements from March 2005, and Form W-2 Wage and Tax Statements for 2003 and 2004 from both Food Expo

Inc and the City of New York]

Doty noted that on first page of the mortgage loan application, the address listed as the Respondent's home is at Grandview Place in Fort Lee, New Jersey, which was also the property that was being refinanced through this mortgage. Doty also noted that the application asked whether the "property will be [a] primary residence, secondary residence or investment. The primary residence box is checked in that caption."

Doty went on to explain that an employee of the Department has to live within a certain geographical area, and New Jersey does not fall within that geographical area. He said no place on the application did the Respondent indicated that he was, in fact, employed by the Department. He further explained that in the part of the application that called for employment information, "the only employer listed is Food Expo, New York, and it states that the Respondent is the controller of the company."

Doty described Food Expo as "a typical deli. You can get hot and cold sandwiches, salad, it has a salad bar, and it has a small grocery department." The business has since been sold and goes under another name now, but it was located at 833 Second Avenue in Manhattan.

Doty explained that "controller" is a title that is assigned to the head of the accounting department in a company. The controller, he said, would handle accounts payable, accounts receivable and general accounting of a business.

Doty said, "[T]here is nothing else on the application to indicate [that the Respondent had] any other employment," aside from the Food Expo employment as controller.

Doty said the Respondent listed his monthly income as \$11,130. Doty said the

are two Earning Statements from Food Expo, one for March 1, 2005 to March 15, 2005 and another for March 16, 2005 to March 31, 2005, show a gross pay of \$5,565 each with a combined monthly earnings of \$11,130, the amount shown on the mortgage application Doty agreed that it was fair to say that the monthly income that the Respondent indicated on the mortgage application reflected the income from Food Expo employment alone

Doty testified that at the bottom of page 3 there is an indication that the application was taken over the telephone. It does not state the interviewer's name or have an interviewer signature, the document is dated April 15, 2005 and has a telephone number for the "interviewer" employed by National City Bank. The page also has the borrower's signature. He indicated that there was also a caption on the page that basically states that the individual signing the document is making certain representations, these representations are truthful and accurate, and the applicable federal title under which the false statement would be prosecuted. Doty stated that there is no indication of a co-borrower as there is only one signature.

Doty said the ACRA net report prepared for First American Lending Corp. is a summary of the Respondent's three credit reports from the credit reporting bureaus. Doty stated

Credit bureaus get their information from various sources. Loan applications, credit card applications, various banking documents, public record information. For example, when you purchase a piece of property, you file the deed and the mortgage with the county clerk, and the credit reporting bureaus will draw information from there as well.

The ACRA net report, Doty noted, provided additional employment information. It listed two different employers, "JTNY Inc.," and "NYPD." Doty said that JTNY is an ATM (automated teller machine) processing and services business that the Respondent

owned and in which he had a partner as well

Upon questioning by the Court, Doty stated this report was not prepared by the Respondent

Doty explained that an earning statement is, "essentially, a paycheck stub. It lists what the employee earned as gross pay, and then the various deductions, and his net pay for the period." He said that the first Earning Statement was for March 1, 2005 to March 15, 2005. It indicates the pay date as March 18, 2005, provides a check number and states that the employer is Food Expo, Inc., 833B Second Avenue, New York, New York 10017. It also provides, he noted, some information in regards to the employee. It gives the employee number, the department the employee works in and his social security number. Doty testified that the Earning Statement had the Respondent's correct social security number and listed the Respondent's address as being at Grandview Place in Fort Lee, New Jersey.

Doty testified that the mortgage application had a second Earning Statement from Food Expo for the period of March 16, 2005 to March 31, 2005, with a pay date of April 1, 2005.

Doty stated that the Form W-2 Wage and Tax Statement is, "[e]ssentially, a summary of the employee's earnings for the year." Doty explained that the Respondent's 2004 W-2 from Food Expo listed the Respondent's name and had his address as the location at Grandview Place in Fort Lee, New Jersey. Doty pointed out that the 2003 W-2 from Food Expo listed the Respondent's address as a location at 56 Street in Woodside, New York, which is the Respondent's address of record with the Department. Doty went on to explain, "Taken in conjunction with the information on the first page of

the mortgage application, it would appear that the Respondent moved from 56 Street in Woodside where he was residing in 2003 to Grandview Place in Fort Lee, New Jersey where he was residing in 2004 "

Doty noted that the two W-2s from the Department, for the years 2003 and 2004, do not list the Department as his employer, but the City of New York

Doty said that by looking at the headers from the fax machine that are printed on each page, the two W-2s for Food Expo were sent [to the bank] on different dates He said the mortgage broker, First American Lending, faxed the 2004 W-2 from Food Expo on April 15, 2005 The 2003 W-2 from Food Expo, as well as the two W-2s from the City of New York, were faxed about a week later, on April 21, 2005

Doty testified that Byong Woo Choi is listed in the records of the New York State Department of State, Division of Corporations as the Chief Executive Officer of Food Expo, Inc

Doty conducted an official Department interview of the Respondent on November 6, 2008 (DX 2) Doty testified that during the interview the Respondent acknowledged that he submitted the mortgage application (DX 1), that he owned the property at Grandview Place in Fort Lee and that he financed the property in order to purchase it Doty said that he was not sure, but he believed that the Respondent had said that the signature appeared to be his but the Respondent was not sure Doty testified that the Respondent said he had provided W-2s along with tax returns in connection with the mortgage application Doty said the Respondent had said the W-2s were from the Department and he denied providing any other W-2s to the mortgage broker

Doty testified that the Respondent denied knowing Food Expo and said the name

did not "ring a bell " Doty said he showed the Respondent the W-2s from Food Expo but that did not refresh the Respondent's recollection He said the Respondent denied ever having been employed by Food Expo

Doty testified that when the Respondent was asked if he knew Choi, the Respondent was not sure if he did This was the only time Doty had asked about Choi Doty also said that the Respondent did not indicate to him that he had been the victim of a fraud, nor did the Respondent indicate to him that someone had forged his name on the application

After interviewing the Respondent, Doty said he went back to look through all the documents he had to see if he could find any indication that the Respondent and Choi had a relationship He found the signature card for an account at Woori America Bank for a company called Dong In Entech Inc (DX 3), and obtained it pursuant to a subpoena The Respondent and "Byong W Choi" are signatories on the card

Doty said this was significant in determining whether the Respondent knew Choi in that Choi is the first signature on the account and the Respondent's signature appears underneath Doty also said that the Respondent never told him he knew Choi by any other name Also Doty testified that his investigation indicated that the Respondent never deposited any monies from Food Expo into his accounts He said, "[T]here was no indication in any of his accounts that the [Respondent] was receiving any income from Food Expo, Inc in regards to salary or wages "

On cross-examination, Doty agreed that he has never spoken with Choi He agreed that he discovered that most people knew Choi as Mike Choi He stated that at Food Expo they did not know him as Byung Woo but as Mike He said that he had no

success in locating Choi Doty agreed that everyone he spoke to in his investigation knew him as Michael Choi

Doty testified that he knew Joseph Choi, who he believed was a relative of the Respondent Doty did not confuse Joseph with Michael and there is no relationship between the two Doty said he never saw the original mortgage application documents (the ones in evidence are copies) He agreed that he was informed that everything was done on the telephone and that it was his impression that everything the Respondent signed had been prepared for him Doty agreed that the document appeared to have been signed on April 27, 2005 He agreed that on the ACRAnet report there was nothing to indicate that the Respondent worked at Food Expo

Doty testified that he had reviewed the Respondent's tax returns for 2003 and 2004, which had been obtained through a subpoena from the Manhattan District Attorney's office He agreed that nothing in those returns mentioned Food Expo Doty said that he had tried to find out if Food Expo had filed W-2s for the Respondent with the IRS but was unable to get that information due to privacy laws He did not ask the Manhattan District Attorney's office to subpoena wage records from Food Expo, nor did he ask them to subpoena Worker's Compensation benefits from that company He did not request information about withholding tax from Food Expo When asked if these records would have been helpful Doty stated, "They would have but being the officer himself stated he did not work there, it didn't seem to be necessary "

Doty agreed that the mortgage was a second lien, the equivalent of a home equity loan and that the terms were 120 months He also agreed that the application was made three-and-a-half years ago He said that at the time of his inquiry it was up-to-date He

found no irregularities in the payments made to pay this second lien

Doty said that he would not be surprised to learn that the second lien had been paid off and he agreed that that would not be an indication of fraudulent activity. He said that during the period of 2005 to 2006, the Respondent's income was "substantial." Doty agreed that based on the Respondent's income from his company, ATM Services of New York, and his Department income, the Respondent was, "without a doubt," qualified to pay a refinancing of the \$750,000 first mortgage.

Doty noted that someone who is self-employed would have to take steps to verify his income. Doty agreed that about 38% of the Respondent's Department salary would cover the mortgage. He agreed that neither the underlying or second mortgage were ever in default. He agreed that the Respondent made over \$100,000 in income outside the Department. He did not know the name of the person who took the mortgage application information over the telephone. He agreed that the mortgage statement, obtained at closing, would contain the mortgage broker's fee but he did not have that document. Doty said that it was not his position that Choi had anything to do with the re-financing. He said all he was saying was that Choi was CEO of Food Expo.

Doty said he learned from his conversation with the Respondent that Dong In Entech was supposed to be an ATM business. He said he obtained the Department of State's information for that corporation and the bank cards from Woori America Bank. He did not recall how much money was in that account and did remember that certain payment associated with ATM fees went into the account. He never had exemplars done of the Respondent's handwriting.

Doty stated that he interviewed people who worked at the location where Food

Expo had been, as Choi had sold the business two years earlier. None of the employees currently there knew the Respondent or Choi. Even the owner did not know Choi.

Doty said that he could not say by looking at the Earning Statements from Food Expo in the mortgage application if they were printed from Quicken, Quick Books or any other software but he acknowledged that one could buy earning statement blanks and type or laser print information on them. The same, he said, was true for the W-2s.

Doty agreed that, at the official Department interview, he never asked the Respondent if he knew Michael Choi. He got the name Byung Woo Choi working backward from the Department of State records. There was no second interview. Doty said that the Respondent never said he knew a Michael Choi. Doty said they looked for Choi using his public records report. He did not check other law enforcement agencies to locate Choi, nor did he check to see if Choi had a criminal record.

Doty agreed that he did not look at the closing statement to see if there was an origination fee paid to Choi.

On re-direct examination, Doty explained that if the Respondent worked for the Department and for ATM Services of New York at the time of the mortgage application, the benefit he would gain by listing Food Expo instead would be that he would not have to verify his income. He explained that income from a business is unverified. He stated that to verify business income, "you bring in an accountant or someone who is capable of providing an opinion on financial documents to say that the amount represented as income from the business is true and accurate. That costs money and it also locks you down as far as what is your actual income from the business." He agreed that doing so would have forced the Respondent to list exactly what ATM Services of New York made

and he would have to make certain documents available to the mortgage company Doty agreed that not subjecting business income to verification could be beneficial, stating

One of the ways they would verify that in addition to having somebody come in and audit the financial statements or review the financial statements even would probably be enough, they would request tax returns and then verify the income on the tax return is what was actually being reported or being earned so what is being reported is what is actually being earned Any discrepancy between the two would obviously be detrimental to the process

Doty said that the Respondent's tax returns were not complicated but indicated that they were not entirely clear He explained

When the accountants prepare tax returns, there are two different types of tax returns, in this case we are talking about the personal tax return and the business tax return

For a personal tax return, you just take whatever the client brings in, W-2s, 1099s interest or various other income statements, and then there are deductions, whatever they are claiming they spent on various tax deductions You amass that, put it into the form and it spits out a number tell you how much the client owes or is going to get returned from the federal government

There is no independent verification of that income, so again, I can say I can deposit \$500,000 into my personal bank account and the accountant would never know unless I told him

For a business, it's a little different In this case, having spoken to the accountant, I know how he prepared the return He would get the banking information from the Respondent's business, bank statements, checks, deposit slips, things like that, and they would create the accounting records from that information So they had third party verified information for the business

However, if income from the business didn't make it into the business bank account, it was diverted in some way, it would never be picked up on either tax return, personal or corporate

Doty agreed that this diversion could hypothetically be discovered if, in fact, it has to be declared as income on a mortgage application

On re-cross examination, Doty agreed that the business was incorporated as an 1120S Corporation, which is also referred to as a "pass through" corporation. He agreed that the total revenue minus expenses would pass through the corporation untaxed as a corporation and taxed at the personal rate of the shareholder. He agreed that, at the time of the incident, ATM Services of New York had one shareholder, the Respondent. Currently, the only shareholder is the Respondent's mother. He also agreed that all of this is legal.

Doty said he spoke with the Respondent's accountant, Michael Leone. Doty said he (Doty) reviewed the tax returns and income statements that Leone prepared for the Respondent. He said that Leone was taking certain payments in January and listing them as a payable in December and reducing the taxable income. He agreed that this would allow the Respondent to receive the money earlier than the liability would be payable to the government. Doty noted that "it all equals out assuming the business continues."

Doty agreed that he reviewed all of the Respondent's bank records, including money that was deposited in banks through the 1120S Corporation. The money was deposited into the Respondent's business account, and "[u]ltimately passed through the Respondent's tax return."

The Respondent's Case

The Respondent testified on his own behalf

Police Officer James Kim

The Respondent was appointed to the Department, he said, "around 1997" at the age of 28. Prior to his current assignment at the Fleet Services Division, the Respondent had been assigned to the Fifth Precinct. In 2005, he said, he "believed" he lived for "a couple of years," alone, at an address at 56 Street in Woodside. At that time, he purchased a home at Grandview Place in Fort Lee, New Jersey for investment purposes. When he applied for a mortgage, he listed his income from this Department and from the ATM Services of New York business. He said he was the founder of the business and, at that time, he owned about a hundred ATM machines which were located in various places in New York and New Jersey.

The Respondent testified that he had business dealings with a person named Michael Choi and only later learned that his given name was Byung Woo Choi. He did not know this prior to his official Department interview stating, "I have always known Byung Woo Choi as Michael Choi and I've always called him Michael Choi." The Respondent stated that he has not spoken to Choi in "I guess over a few years."

When he first met Choi, the Respondent said, "He was into ATM sales." Choi did not work for ATM Services of New York, "but he was an independent contractor that brought in sales locations." The Respondent said he had business dealings with Choi under those circumstances, noting that they had discussed going into the import/export business but they never did anything with that.

The Respondent said the topic of refinancing a mortgage did come up with Choi. The Respondent testified, "He mentioned that he bought a house in New Jersey, and I mentioned that I have a house too, and he refinanced and got a home equity loan through

that property, and he recommended using his broker so I can get an equity loan for my property, too ”

The Respondent testified that at that time he was making a “substantial amount” of money from the ATM business, which paid a good deal of his expenses, including his mortgage. The Respondent agreed that he took Choi up on his offer and contacted the broker that Choi recommended. Most of the transactions with the broker occurred by phone or fax. He said he provided his W-2 as well as both his personal and business tax returns. The Respondent identified Leone as the person who prepared the tax returns but said he did not think Leone was involved with the refinancing of his investment property.

When asked what happened after he contacted Choi’s broker concerning the refinancing, the Respondent stated, “Like I mentioned, I submitted the applications, you know, through fax through him.” With regard to the closing, the Respondent stated, “[O]nce I obtained the loan, I signed the documents. At my residence in Woodside.” The Respondent described the meeting as “very short, I would say half an hour.” He was not represented by a lawyer or anyone during the closing. He believed he was given a copy of the documents.

After the documents were signed the Respondent stated that he received a check for the loan, which he said he paid off within a year, as he had no need for it. He said he sold the house in Fort Lee about a year ago, after he had paid off the second mortgage. The Respondent testified that when he was shown the W-2 from Food Expo during his official Department interview, it was the first time he had seen that document. He testified that he had no connection to Food Expo at any point between 2003 and 2010 and that he never worked there or received income from that business as an employee.

When asked if he reviewed the entire packet of documents when he signed the application, the Respondent replied, "Honestly I didn't look at every detail I signed where I had to sign If I did overlook something, I apologize I might have I don't know I just signed certain places where I thought it would be necessary "

The Respondent was not sure what his total income was in 2005, when the mortgage was signed He did note that he was able to pay the mortgage on the Fort Lee property, which was the only property he owned at that time He said that he rented his residence in Woodside The Respondent reiterated that the first time he saw the Earning Statements from Food Expo was at his official Department interview and he added that he did not create the documents He said he never reached out to the Department to let them know that he only knew Byung Woo Choi as Mike Choi He said he only realized they were the same person when he reviewed some of the documents from his attorney's office He said Choi is a common name

On cross-examination, the Respondent acknowledged that the signatory document from Woori America Bank (DX 3) reflected that an account was opened on April 27, 2005 He agreed that he was not the first person to sign the document, and that the signature of Byung Woo Choi was signed first When asked how it was possible that he did not know who Byung Woo Choi was, the Respondent stated, "I am not familiar with Korean names I just know him as Michael Choi I don't speak Korean When it said Byung Woo Choi, I didn't pay attention to his given name " The Respondent denied paying attention to Choi's given name in the document and said that he knew him as Michael Choi

The Respondent agreed that during his official Department interview he was

asked a number of questions about the refinancing of the Fort Lee property and that the name Choi came up. The Respondent stated that he was asked about Byung Woo Choi, not Michael Choi. He asserted that Choi is a common name and that there was also questioning about a Joseph Choi. He believed that Doty was trying to confuse him.

The Respondent agreed that he had said that Choi had referred him to the broker in the refinancing of the Fort Lee property. He agreed that he was questioned about the refinancing and that he was shown the application. When asked if he was questioned about a man named Choi in connection with this, the Respondent stated that he was asked about Byung Woo Choi, "not just Choi." The Respondent agreed that he never said that Michael Choi was involved with this property and that at no time during the interview did he mention the name Michael.

The Respondent agreed that the first page of the loan application (DX 1) lists his employer as Food Expo and does not list "NYPD," "ATM Services [of] New York" nor "JT[NY] Incorporated." The Respondent said that he could not "confirm" that he initialed that page, but did agree that it "look[ed] like" his handwriting. Looking at the signature on the document, he said, "[I]t doesn't look like my signature." He then claimed that the first time he saw the application was at his official Department interview. He did not think he saw it at the closing.

The Respondent acknowledged that some of the signatures on the application were his. He then agreed that he saw parts of the document before his official Department interview. He claimed, however, that he did not see some parts of the application until that interview. The Respondent denied seeing the first page of the application before the interview, then said he did not believe so, adding that he was not

sure He stated, "It was a long time ago I filled out a lot of applications, you know I really don't recall if this was the exact page " He said he clearly did not create or see the Food Expo W-2s before his interview, saying, "I can confirm that " The W-2s were not present at the closing He said he submitted the application with his W-2s from the Department, stating, "I thought that would be enough " He then added, "Also, my tax returns from my business from ATM Services I thought those would be sufficient enough to get the loan, and I have good credit I didn't feel that, you know, I needed to do anything fraudulent to obtain this loan "

On questioning by the Court, the Respondent acknowledged his signatures on page 4 of the Uniform Residential Loan Application and on both sides of the Attachment to Loan Application (DX 1) He agreed that these signatures were dated April 27, 2005

On continued cross-examination, the Respondent agreed that he had said that some of the signatures were his and some were not He did not report to any law enforcement personnel that someone had signed his name on the mortgage application The Respondent noted that once he realized that Choi had been involved in fraudulent activity, he did not try to contact him He did not want to get involved with anybody engaged in criminal activity

The Respondent stated that Choi introduced him to the broker and that he did not know how much he was involved He testified, "So these are the only people that I know of that might be involved " The Respondent said he did not know who wrote his initials on the paper He did not report this to the Internal Affairs Bureau or to any law enforcement agency

The Respondent agreed that it was a "possibility" that he signed every page of the

application and dated it as indicated, but simply did not read it as carefully as he could have

The Respondent acknowledged stating that someone had brought up the name of his cousin, Joseph Choi, during his official Department interview and that someone had tried to confuse him. He agreed that Joseph Choi came up in connection with his being in the ATM business with him and that it had nothing to do with the mortgage application.

On re-direct examination, the Respondent testified that he satisfied his second lien in, he believed, February 2006, and that he had the mortgage for about 11 months. He said he did not believe rates were discussed. The Respondent stated that he did not get any benefit from using Choi as a "go between." The Respondent stated that he was born in Korea and came to the United States when he was five years old. He said that he had very little knowledge of the Korean language. He said Choi is one of the most popular Korean surnames and that he has aunts and uncles named Choi. He said that Michael Choi is not related to him. The Respondent said that the given name Byung Woo was never spoken and that he never called Choi by that name. He said the first time he learned that Mike Choi was Byung Woo Choi was through the investigation. He asserted that Byung Choi is a common name, and that when he did an internet search for that name, he got over three million hits. He stated, "So during the interview when they asked me do you know Byung Choi, I wasn't sure."

On re-cross examination, the Respondent said that there was only one time when he was co-signatory on a bank account with a person named Choi. When asked how many people with the surname Choi were involved in his second lien or refinancing of his property in Fort Lee, the Respondent answered, "I didn't even know he was involved

with the second lien ” The Respondent stated that Choi only introduced him to the broker

When asked by the Court to explain what Byung Woo Choi had to do with his obtaining the mortgage, the Respondent stated

I'll explain my relationship with Michael Choi I dealt with him sporadically with the ATM business He brought in some ATM accounts He tried to have me invest into his business which was one of his businesses in import/export, which we opened up an account but I backed out f that business Then he introduced me to a broker who helped me obtain this equity loan Beyond that, I don't think—I wasn't aware of him being involved after the initial introduction

The Respondent stated that he was not aware of Choi getting any kind of commission in relation to the mortgage On additional cross-examination, the Respondent stated that he did not know of any connection between Choi and the mortgage company

FINDINGS AND ANALYSIS

Specification No 1 charges that the Respondent on or about April 27, 2005, “prepared or submitted a false mortgage application to National City Mortgage [*sic*] in order to purchase real property in New Jersey, by a) representing that he was employed by Food Expo, Inc as the company's Controllor, when he was not, b) attaching fraudulent W-2s for 2003 and 2004 representing income as an employee of Food Expo, Inc , and c) attaching two (2) fraudulent 2004 paystubs representing income as an employee of Food Expo, Inc ”

It first should be noted that the mortgagor in this case was, according to the loan

application (DX 1), the National City Bank and not "National City Mortgage "

Additionally, this was not a mortgage to "purchase real property in New Jersey" but an application for a second mortgage on real property already owned by the Respondent

Those technicalities aside it is clear that a mortgage application was submitted in which it was represented that the Respondent was employed as the controller of a company called Food Expo, Inc. There is no question that the Respondent did not work for that company in any capacity. The application also had fictitious W-2s for the years 2003 and 2004 attached to it, as well as two fictitious Earning Statements from that company.

The application also falsely lists the property at Grandview Place in Fort Lee, New Jersey, as the Respondent's current address and primary residence although the Respondent testified that he never resided there. It should be noted that the false W-2 for 2004 lists this address in New Jersey as the Respondent's address, as do the two Earning Statements which purport to be for pay periods in March and April 2005.

The Respondent admitted making the loan and acknowledged his signature on some pages of the application. He denied any and all involvement with the false information.

The Respondent acknowledged that he received money based on this application. The full amount of the loan according to the application was \$165,000 and the net amount he was to receive, again according to that document was \$161,600. The Respondent also asserted after taking out the loan he determined that he did not need the money and that 11 months later he paid the loan back in full.

This loan, the Respondent said, was obtained at the urging of a person he knew as

Mike Choi, who according to Doty, was the owner of Food Expo, Inc. The Respondent implied that somehow Choi, working with the mortgage broker, altered the mortgage application.

The Respondent claimed that Choi put him in touch with the mortgage broker. He said the application process was done via phone and fax. He said the closing was done at his home in Woodside, Queens and that he did not have an attorney. He denied looking carefully at the documents.

The Respondent claimed that the first time he saw most of the pages of the mortgage application was at his official Department interview. Similarly, he claimed the first time he saw the fake W-2s and Earning Statements was at that interview.

The Respondent asserted that he submitted W-2s for his work with the Department as well as tax returns from his outside business, ATM Services of New York.

The Respondent has thus attempted to distance himself from the false statements in the loan application and disclaimed responsibility for them. This Court must reject the Respondent's arguments in this regard. The evidence is more than sufficient to establish that the Respondent knew about the false statements in the application. Moreover, even if one were to accept the Respondent's claims, he certainly obtained a substantial benefit as a result of filing these forms and should have known about their content.

Respondent has basically blamed Choi for the falsehoods. He claimed that Choi encouraged him to take the loan and referred him to the mortgage broker. He implied that somehow Choi, in cahoots with the mortgage broker, put the false information in the application without his knowledge.

Certainly Choi, as owner of Food, Expo Inc., was in a position to generate the

phony W-2s and Earning Statements. But there is no evidence that Choi prepared these forms and put them in the application without telling the Respondent and the argument that he did is pure conjecture. There was no motive for Choi to have done so either.

The theory that somehow Choi got a kickback for getting the Respondent to take out this loan is unsupported by any evidence. In any event, it is insufficient to explain the alleged conduct by Choi. If the Respondent could have gotten the loan with the correct information, which the Respondent claims he submitted, then Choi would have gotten his kickback without the forged documents. The only one with a motive to submit the false documents was the Respondent. As Doty explained, the Respondent stood to save the cost of hiring an accountant and avoided scrutiny of his company's finances.

During his official Department interview, the Respondent requested and ultimately received copies of the mortgage application. A break was taken for the Respondent to have an opportunity to review the documents. When the break ended the Respondent was given an opportunity to comment on the documents but he made no mention of Mike Choi or anyone else helping him to get the loan (DX 2).

Blaming the problem on Choi and the mortgage broker seem, at the very least, like an attempt to remove responsibility from himself which was thought of after the interview.

There are also the signatures that appear on the loan application. The Respondent denied signing or initialing any of the pages that contained false information but admitted signing other pages. Those pages are largely blank and contain basically one piece of information regarding the total amount and monthly payments of the first mortgage on the house in question.

Looking at the signatures on those pages, it is clear that they are the same as the one on page 3 of the Uniform Residential Loan Application, which the Respondent denied signing¹. Also on that page are a list of questions that require the applicant to make "Yes" or "No" declarations. One of the questions, which asked whether the applicant intended to occupy the property as a primary residence, is answered "yes". This of course is one of the misstatements in the application.

It is simply inconceivable and not credible that the Respondent did not know about the false claims in the mortgage application which led to him receiving a substantial amount of money. This Court therefore finds that the Respondent knew about the false W-2s and Earning Statements as well as other false information in the loan application.

It is now necessary to look at the specification itself. Specification No. 1, in addition to charging misconduct under Patrol Guide section 203-10, also charges that this misconduct constitutes criminal conduct under several sections of state and federal law. The specification alleges that the Respondent's conduct violated Title 18 of the United States Code § 1001 subdivisions 2 and 3. These two subdivisions are actually part of section (a) of that statute and must be read in conjunction with it as (a) forms the preamble to subdivisions 2 and 3. Here is what the statute, in pertinent part, provides: "whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully (2) makes any materially false, fictitious, or fraudulent statement or representation, or (3) makes or uses any false writing or document knowing the same to contain any materially false,

¹ The Respondent's statement that this did not look his signature can only be described as patently false given its similarity to the other signatures that he acknowledged as his.

fictitious, or fraudulent statement or entry, shall be fined under this title, imprisoned not more than five years or both ”

As can plainly be seen, this statute relates to documents and statements submitted to the United States government. There is no evidence in this case that the mortgage application at issue was filed with any agency or entity of the Federal government or that the funding came from any Federal source. Nor is there any reason to believe that, in the end, this was anything more than a transaction between a bank and the Respondent. As such, the evidence does not meet the statutory threshold.

There is no question that on page 3 of the mortgage application, in very small lettering, above what purports to be the Respondent's signature, there is language which claims that misrepresentations in the application, whether intentional or negligent, would subject the borrower to fine, imprisonment or both under this section of the United States Code. That claim in the application is not controlling on the issue of jurisdiction and unless the document was submitted to an agency of the executive, legislative or judicial branch of the United States government, it cannot create criminal liability under this section.

Clearly, the cited section of the United States Code is inapplicable to this case. The issue of whether the two sections of the New York State Penal law are applicable is a somewhat more complicated matter. The specification alleges that the Respondent violated Penal Law § 170.10 (1) entitled, Forgery in the second degree and Penal Law § Section 175.05 (1) entitled, Falsify Business Records in the second degree. The first of these sections provides, in pertinent part that, “a person is guilty of forgery in the second degree when, with intent to defraud, deceive or injure another, he falsely makes,

completes or alters a written instrument ” The second section provides, again in pertinent part, that “a person is guilty of falsifying business records in the second degree when, with intent to defraud, he makes or causes a false entry in the business records of an enterprise ”

There is a common element in that both of these crimes require “intent to defraud ” In this case there is uncontroverted testimony that the Respondent fully repaid the entire loan early, indeed he did so within one year There was also testimony that the Respondent had ample assets and an income, in addition to his police salary, that exceeded that claimed on the false W-2s and Earning Statements

The Department also offered testimony as to what the Respondent’s reason for inventing this phony income source might be Doty suggested that to complete the mortgage application with information about the Respondent’s ATM business would have required hiring an accountant and would have been costly Additionally he claimed it would have subjected the Respondent’s business bookkeeping to scrutiny²

Thus, the Department itself has provided a motive which seems, at some level, to be inconsistent with its allegation that the Respondent’s intent was to defraud His purpose, if the Department is correct, was to avoid the cost of an accountant and scrutiny of his books and records Moreover, the correct information, which was that the Respondent had greater income than that listed on the application, would presumably have made it more likely that the lender would grant the loan Additionally, intent is usually gleaned from the conduct of the person or as it is stated in the standard jury

² Although unsaid, this seems to imply that there were some improprieties in the Respondent’s bookkeeping Indeed, in the original charges filed against the Respondent there were three specifications claiming serious tax improprieties All three of these specifications were dismissed by the Department prior to trial as the Department conceded that they could not be proven

charge, a person ordinarily intends the consequences of his or her actions. In this case the Respondent repaid the loan in full, which is evidence that he did not intend to steal the money based on his misrepresentation.

“As the Honorable William C. Donnino noted in his commentaries to *Penal Law* § 175.05, ‘[t]here is no Penal Law definition of intent to defraud.’ It has been suggested that an intent to defraud should be purpose of leading another into error or to disadvantage.” *People v. Briggins*, 1980, 50 N.Y.2d 302, 309, 428 N.Y.S.2d 909, 406 N.E.2d 766 (concurring opinion) (Jones, J.). And, while an intent to defraud is often for the purpose of gaining property or a pecuniary benefit, it need not be. See *People v. Kase*, 1981, 53 N.Y.2d 989, 441 N.Y.S.2d 671, 424 N.E.2d 558, *aff’d* for reasons stated at 76 A.D.2d 532, 431 N.Y.S.2d 531. In *Kase*, a prosecution for the filing of a false instrument, an intent to defraud was found where a person intentionally filed a false statement with a public office for the purpose of frustrating the State’s power to fulfill its responsibility to carry out faithfully its own law.” (Donnino, Practice Commentary, McKinney’s Cons. Laws of NY, Book 39, *Penal Law* § 175.05, at 66), as cited in *People v. Taylor* 55 A.D.3d 640.

There are several other cases, worthy of note, that attempt to address this issue of “intent to defraud.” The first, *People v. Saporita and Stevenson*, 132 A.D.2d 713 (1987), interestingly enough, involved two NYC police officers, who, after having been involved in a minor accident while driving a Department vehicle “altered police records” to hide the accident. The apparent motive was to avoid Department discipline.

The Court in that case held, “That conduct, however, is insufficient to establish an ‘intent to defraud’ as charged, since in the instant record, there is no evidence that

'another person' was deprived of any property or right as a result of the defendants' conduct regarding the public records "

In *People v Ramirez* 168 AD2d 908 (1990) the defendant obtained credit cards by providing false information in her applications. She attempted to rely on the *Saporita* decision on her appeal claiming that no one actually suffered a loss. The Court, in rejecting her argument held, "The evidence shows that the defendant intended to defraud various store owners by applying for and obtaining credit cards in the name of another person when she could not get credit in her own name and that she intended to deceive those stores and induce them to extend credit to her, which, but for her misrepresentation, they would not have done. That evidence proved defendant's 'intent to defraud' as defined by the Court's charge "

Indeed both the *Ramirez* and *Saporita* decisions rely heavily on the definition of "defraud" used by the trial judges in their respective charge to the jury. Indeed the Court in *Saporita* implied that there might have been a different result if a broader definition of "intent to defraud" had been given to the jury.

Black's Law Dictionary, (6th ed. 1990) defines "intent to defraud" as "an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property "

There is no question that the Respondent intended to deceive in the loan application because it contains patently false information about his employment and about the use of the home as a primary residence. There is also no question that the issuing bank transferred property, in this case a large sum of money, under terms and

conditions that relied on those false representations. Certainly, the Respondent had an intention to deceive, under the forgery charge. For these reasons the Respondent is found Guilty of Specification No. 1.

Specification No. 2 charges that the Respondent "impeded or otherwise interfered with an official Department investigation" in that during his official Department interview on November 6, 2008, he denied "that he had represented that he was an employee of Food Expo, Inc., or that he had attached two W-2 forms and Earning Statements indicating that he was an employee of Food Expo, Inc., related to a mortgage application submitted by him in on or about April 27, 2005 to purchase real property in New Jersey." The specification also claims that, as part of this misconduct, the Respondent "falsely denied knowing an individual called Byung Woo Choi, the Chief Operating Officer of Food Expo, Inc."

Once again, the specification incorrectly claims that the mortgage application was to "purchase property" when it was in fact an application for a second mortgage on property the Respondent already owned. More importantly, the specification refers to his official Department interview

The second of these (item "b" in the specification) is that the Respondent falsely denied knowing a person named Byung Woo Choi. The Respondent testified at this trial that he did not know this individual by that name but knew him by the name Mike or Michael Choi. He pointed out that the name Choi is a very common Korean name. The Department countered by offering in evidence a signature card for an account at Woori America Bank for a business entity named Dong In Entech, Inc. (DX 3). There are two

signatures on the form, the Respondent's and that of Byung W Choi and therefore the Department concluded that the Respondent, in fact, knew that Mike Choi was also Byung Woo Choi

There are several problems with this argument. The first is that the Department assumed that because the Respondent's signature appears on the signature card in Box 2, which is located directly below the Box 1 completed by Choi, that Choi signed the form first and, more importantly, handwrote his name on the form before the Respondent did. It may have occurred in that sequence but there is no way of knowing that just by looking at the copy of the signature card that is in evidence. Even if the signatures were put on the paper in the sequence the Department assumed, there is no evidence that the Respondent noted that "Mike" signed his name "Byung W". He may have, but the piece of paper does not prove it.

The Respondent testified that the corporation, Dong In Entech, Inc., never did any business and that no money went into the account. Doty testified that he believed some ATM transactions fees went into that account but provided no details and left the impression that there was not much activity in the account. Overall, the Department offered no evidence to counter the Respondent's claim that this was not an active business, nor was any other document involving that corporation or Byung Woo Choi offered into evidence. This being the only evidence the Department offered to show that the Respondent knew Mike Choi as Byung Woo Choi, it can only be described as a very slim reed.

It is now necessary to look at what actually was said at the official Department interview on November 6, 2008. The relevant testimony appears on page 27 of the

transcript of that interview (DX 2), where the Respondent is asked, "Do you know Byung Choi? Do you know a Byung Choi? The Respondent answered, "I'm not sure " The officer questioning the Respondent then said "You're not sure," and then moved on to a completely different topic, asking where the Respondent lived in Queens This is the only place in the portion of the transcript offered into evidence that the subject of Byung Woo Choi came up ³ "I'm not sure" is not a denial of knowledge, as alleged in the specification Because no follow-up questions were asked, there is no way of knowing if additional questioning would have triggered a recognition that the person they were asking about was someone the Respondent knew or whether he would have lied

The Department argued that, given the context of the questioning, the Respondent should have known that the Byung Choi they were asking about was the Michael Choi the Respondent acknowledged he knew

Here the Department may have something of an argument The transcript shows that the Respondent had been asked a number of questions about the loan application At one point, a recess was taken to give the Respondent and his representative an opportunity to review those papers, which included the fake W-2s and Earning Statements When the interview resumed, the Respondent was asked if he wished to make any comment regarding the documents and he responded, "No " It was directly after that that he was asked about Choi Given that the Respondent claimed at this trial that the man he knew as Michael Choi urged him to take out the mortgage and introduced him to the mortgage broker, the name Choi probably should have drawn some recognition

³ Only a portion of the transcript of the interview was placed in evidence The Department selected the pages which contained material relevant to the charges and specifications in this case This was done on consent of both sides

Notwithstanding that fact, it is simply not possible to find that the Respondent "falsely denied knowing" Byung Woo Choi when his answer was that he was not sure, particularly under circumstances where there were no follow-up questions

The first part of this specification (item "a" in the specification) deals with the Department's claim that he impeded the investigation in that he "falsely denied" that he had claimed in the mortgage application that he was an employee of Food Expo, Inc and that he "falsely denied" that he had attached two W-2 forms and two Earning Statements as an employee of the company

Patrol Guide section 203-08, which addresses the issue of false statements at an official Department interview, sets a high standard and demands truthfulness from members of the service. Even so, the Patrol Guide allows an exception for a "mere denial." It is hard to imagine a more straightforward denial than that set forth in this part of the specification. The language of the specification makes clear that what is being charged is the Respondent's denial of having claimed in the application that he worked for Food Expo, Inc and that his denial of having attached the phony W-2 forms and Earning Statements. If a member of the service is permitted to enter a mere denial then that denial can hardly be the basis for a claim that he impeded the investigation.

Additionally, there was absolutely no evidence presented to indicate how these statements "impeded" the investigation. When the Respondent was asked these questions, the Department already had the mortgage application in its possession. There is no way of conjecturing, let alone knowing, what it is that the investigators were going to do that the Respondent's answers blocked.

The Respondent is found Not Guilty of all parts of Specification No. 2

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined, see *Matter of Pell v Board of Education*, 34 N Y 2d 222 (1974)

The Respondent was appointed to the Department on April 15, 1997
Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum

The Respondent has found guilty of submitting a mortgage application which contained false information and contained supporting documentation, W-2s and Earning Statements, which were simply fake Obviously, this is a serious matter but there are some other factors, which in fairness need to be recognized

The first of these is that the Respondent paid back the mortgage in full and no money was lost by the lender Moreover, while the Respondent intended to obtain the money based on the false information, there was testimony that he is a man of some financial means, and therefore it is clear that he intended from the inception to pay back this loan

It should be noted that the tax returns were reviewed, apparently with great care and detail, and as has been noted, all Departmental charges in that regard were dropped

Further, looking at the mortgage application, it is clear that the bank that made this loan was palpably negligent as the application contained conflicting information and omissions For instance, on the portion of the application filled out by the Respondent, the only employment he listed was with Food Expo but the independently prepared credit reports failed to list Food Expo but did list the NYPD as his employer

Two whole pages, in which the Respondent was supposed to have listed his assets, are virtually empty. Not a single bank account or automobile or other property is listed. The only item listed is the house in New Jersey which is the subject of the loan. Clearly the bank did not carefully review the application.

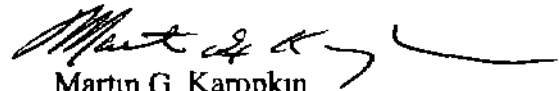
On the other hand, a police officer, as part of his or her job responsibility, must complete forms that are submitted to many places including the court system. The accuracy and reliability of these various forms is critical, even where the event reported matter may seem to be of little consequence.

The Respondent's conduct in submitting forms with completely fake information raises significant questions about whether he takes the accuracy and honesty of documents, particularly legal documents which are ostensibly signed as correct and subject to criminal sanction, as a serious and important issue.

There is also the problem of the Respondent's prior disciplinary history. In 2004, he was penalized 12 days for misconduct in relation to his outside employment. In October 2006, a mitigation hearing was conducted in regard to charges that that he engaged in unauthorized off-duty employment from the period December 27, 2002, through December 29, 2004, and from December 29, 2005, through February 24, 2006. During that mitigation proceeding, the Respondent explained that the earlier, 2004 case had involved his failure to obtain permission for employment in one of his ATM businesses and that he also had an ATM machine in the 5 Precinct where he worked. In an order dated February 12, 2007, the Respondent was penalized with the loss of 30 vacation days in that second case. In 2005 he lost 32 suspension days for involvement in an off-duty assault.

Given his disciplinary history and the nature of the current case, this Court finds that the only penalty it can recommend is Dismissal from the Department

Respectfully submitted,



Martin G. Karopkin
Deputy Commissioner – Trials

APPROVED
MAR 29 2011
RAYMOND W. KELLY
POLICE COMMISSIONER

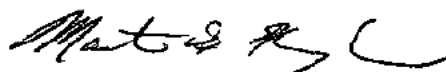

POLICE DEPARTMENT
CITY OF NEW YORK

From Deputy Commissioner – Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
POLICE OFFICER JAMES KIM
TAX REGISTRY NO 919242
DISCIPLINARY CASE NO 85161/09

The Respondent received an overall rating of 3.0 "Competent" on his last annual performance evaluation. He was rated 4.0 "Highly Competent" in 2002 and 2004. He has been awarded one medal for Excellent Police Duty [REDACTED]
[REDACTED]

The Respondent has been the subject of three prior adjudications. In 2004, he forfeited 12 vacation days for engaging in unauthorized off-duty employment. In 2005, he forfeited 32 suspension days and participated in counseling for committing an off-duty assault. In 2007, he forfeited 30 vacation days.

For your consideration


Martin G. Karopkin
Deputy Commissioner – Trials